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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 4

In re T. S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. T. S., Defendant and Appellant.	A122999 (San Mateo County Super. Ct. No. 78298)

T. S. appeals from a dispositional order of probation upon his admission of 11 counts of misdemeanor vandalism (Pen. Code, § 594, subd. (b)(1), (2)). He contends that the juvenile court erred in denying his motion to suppress evidence because his mother did not have the authority to consent to a search of his belongings. He also argues that the conditions of probation prohibiting association with known gang members, and restricting his use of communication devices violate his constitutional rights of freedom of speech and expression. We affirm.

I. FACTUAL BACKGROUND

The evidence at the suppression hearing showed the following: On February 12, 2008, Noel Hayes reported to Officer Rebecca Voetsch that there was graffiti on the side of his condominium complex in South San Francisco. Hayes believed one of the children from the complex was responsible since he had seen the same type of

graffiti on the front door of the minor's unit at the complex. On March 4, Voetsch spoke with the minor's mother, who agreed to allow the police to search the apartment. The police did not find any graffiti on the front door of the minor's home. Inside, however, they saw graffiti on the minor's bedroom door and furniture, including his dresser.

The officers received permission from the minor's mother to search the minor's bedroom but did not ask the minor, who was present, for his consent. Voetsch believed the mother had the authority to allow the officers to search the minor's bedroom. The minor did not express any objections to the search. Upon searching the minor's bedroom, the officers found four notebooks containing graffiti, and a box in the closet with graffiti on it. After finding the items, the officers took the minor to the police station where he voluntarily admitted to writing graffiti around the community with the moniker "Bicks One."

The minor's mother testified that the minor's bedroom does not have a lock on the door, and he does not share the bedroom with anyone. She does not store any clothes in the minor's closet. She further testified that she did not clean his room, but she did supervise the cleaning of his bedroom and could go into his bedroom and check on anything whenever she wanted. She could also go into his closet, drawers, and "everything" else.

The juvenile court denied the minor's motion to suppress the evidence seized during the search of his room.

II. DISCUSSION

A. Motion to Suppress

The minor contends that the court erred in denying his motion to suppress evidence because his mother did not have the actual or apparent authority to consent to the search of his room or his personal belongings, and the search was therefore in violation of his Fourth Amendment rights.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found,

the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

In *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219, the court upheld the principle that the search of property, without warrant and without probable cause, but with proper consent voluntarily given, is valid under the Fourth Amendment. Permission to search may be obtained from a third party who possesses common authority over or other sufficient relationship to the premises or effects sought to be inspected. (*United States v. Matlock* (1974) 415 U.S. 164, 171 (*Matlock*).) Third party consent rests on mutual use of the property, "so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." (*Id*. at p. 171, fn. 7; *People v. Jenkins* (2000) 22 Cal.4th 900, 971 (*Jenkins*) [warrantless search reasonable if person other than defendant with authority over the premises voluntarily consents to the search].)

Relying on *In re Scott K*. (1979) 24 Cal.3d 395, 404-405, the minor asserts that his mother did not have common authority over his room or belongings to consent to a search. In *Scott K.*, the defendant's father gave permission to the police to search his son's bedroom. The search disclosed a locked toolbox containing bags of marijuana, and the defendant moved to suppress the evidence found in the toolbox. (*Id.* at p. 399.) The court held that "[c]ommon authority over personal property may not be implied from [a] father's propriety interest in the premises" nor be premised on the nature of the parent-child relation. (*Id.* at pp. 404-405.) *Scott K.*, however, was decided before Proposition 8 and was based on the California Constitution. (*Scott*, at p. 403.) Proposition 8 now requires that "state and federal claims relating to exclusion of evidence on grounds of unreasonable search and seizure [be] measured by the same standard." (*People v. Camacho* (2000) 23 Cal.4th 824, 830.) A court may not exclude evidence as a remedy for an unreasonable search and seizure unless that remedy is required by the federal Constitution. (*Ibid*.)

Here, the minor's mother voluntarily consented to the search of the minor's bedroom and had common authority not only over his bedroom but also over his belongings. (See *People v. Clark* (1993) 5 Cal.4th 950, 979 (*Clark*), disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421 & fn. 22 [objects left in area of common use or control within scope of consent given by a third party for search of the common area].) She testified that she could enter the minor's room whenever she wished and inspect "everything," including his backpack, drawers, and closet. She, therefore, possessed common authority over the premises and areas sought to be searched. (*Jenkins*, *supra*, 22 Cal.4th at p. 972 [search is reasonable if "the officer conducting the search had a reasonable belief that the person consenting to the search had authority to do so; it is not required that the state establish that the person consenting to the search had actual authority to consent"]; see also *People v. Daniels* (1971) 16 Cal.App.3d 36, 42 [a mother's consent to search her son's bedroom was not limited to the bedroom but also included furniture].)

The minor argues that any police reliance on his mother's authority over his belongings within his room was unreasonable. He argues even if the mother had apparent authority to consent to a search of his room, the consent did not extend to authorize the police to open and search containers that did not belong to her. This argument lacks merit. As explained in *Clark*, whether individuals have joint access or control of property, " 'it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.' [Citation.]" (*Clark*, *supra*, 5 Cal.4th at p. 979.) Here, the minor's mother authorized the search of his bedroom over which she had joint access and control. On these facts, it was reasonable for the police to believe she had the authority to consent to the search of the minor's bedroom, including his belongings. (See *id.* at pp. 979-980 [where defendant left clothes displayed in friend's car, defendant did not maintain a privacy interest in the clothes as against his friend or friend's invitees].)

Nor were the police required to ask the minor for his permission to search his bedroom. The minor's mother voluntarily consented to the search, and she had "joint access or control for most purposes" to the minor's room and belongings, testifying that she could enter his room at anytime and search "everything" in his bedroom. (*Matlock, supra,* 415 U.S. at p. 171, fn. 7; see also *Clark, supra,* 5 Cal.4th at p. 980 [consent of one person with common or superior authority over the area to be searched is all that is required; the consent of other interested parties is unnecessary].)

The minor's reliance on *United States v. Impink* (9th Cir. 1984) 728 F.2d 1228 is also misplaced. In *Impink*, the police searched a home based upon the implied consent of the lessor, who did not have equal access to the premises but had retained only the right to store items in the garage and to remove them at any time. (*Id.* at p. 1232.) Moreover, just prior to the search, the resident had asked the lessor—who had come to the door of the residence—to leave the premises, thus casting serious doubt on the lessor's authority to grant third party consent. (*Id.* at p. 1233.) As the court there concluded, "[w]here a suspect is present and objecting to a search, implied consent by a third party with an inferior privacy interest is ineffective." (*Id.* at p. 1234.) These facts clearly distinguish *Impink* from the case before us.[1]

B. Probation Conditions

The minor also contends that the conditions of his probation are invalid because they have no relation to his crimes or social history and they violate his constitutional rights.

Juvenile courts have broad discretion in establishing the conditions of probation. "The court may impose 'any . . . reasonable conditions that it may determine fitting and

[1] Minor also relies on *State v. Leach* (1989) 113 Wash.2d 735, 736, 743, a Washington Supreme Court case holding that police must prove they secured consent to search a place of business from a defendant owner who was present during a search authorized by the other owner. We decline to follow this case, and think the better reasoning is found in the dissent which points out there is no authority holding that third party consent from an individual with equal access to the searched premises is vitiated where the defendant was present and not objecting. (*Id.* at pp. 749-750 (dis. opn. of Dore, J.).)

proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' [Citation.]" (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 940.) Juveniles are deemed to be more in need of guidance and supervision than adults; thus, their rights are more circumscribed. (*Id.* at p. 941.) Hence, a condition of probation that would be impermissible for an adult offender may be reasonable for a minor. (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242.)

The juvenile court's discretion is not unlimited. A juvenile probation condition must relate to the crime of which the offender was convicted, relate to conduct which is itself criminal, or require or forbid conduct which is reasonably related to future criminality. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084; *People v. Lent* (1975) 15 Cal.3d 481, 486.) A condition of probation that forbids conduct which is not itself criminal is valid only if that conduct is reasonably related either to the crime of which the defendant was convicted, or to future criminality. (*Ibid.*)

1. Gang Conditions

The court imposed standard gang conditions restricting the minor from associating with any person known to him to be a gang member or being in any area where gang members are known by him to meet or get together. The conditions also restrict defendant from having any clothing or item or displaying any hand signs with gang significance. The court found that graffiti use was common among gang members and it sought to prevent the minor from future gang activity: "[G]raffiti use is common among gangs. It's a means to identify themselves in the community and put their monikers up there. I know you were putting different monikers up there, but I don't want you to get sucked into the gang environment and working with them to try to put graffiti elsewhere."

The court's imposition of gang conditions was reasonable in this case. The minor was already using a moniker and admitted to tagging multiple residential as well as city properties with his tag name, "Bicks One." Even though he was not currently in a gang, the propriety of gang terms does not turn on whether a minor is currently involved in a gang. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624 (*Lopez*).) As the court found,

gangs use monikers to identify themselves in the community. In light of the minor's history of graffiti use and tagging, the court's order was reasonable as it sought to prevent future criminality. (See *In re Michael D.* (1989) 214 Cal.App.3d 1610, 1616-1617 [probation conditions designed to curb dangerous associations with gangs reasonable]; *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1502 ["an order directing a minor to refrain from gang association is a reasonable preventative measure in avoiding future criminality and setting the minor on a productive course"].)

2. Communication Devices

The court imposed the following restrictions on the minor's use of communication devices: "The minor shall not be in possession of a paging device or any other portable communication equipment, including but not limited to scanners, without the express permission of the Probation Officer. [¶] The Minor shall not access or participate in any Social Networking Site, including but not limited to Myspace.com. All [I]nternet usage is subject to monitoring by Probation, parents or school officials. [¶] The Minor shall not use, possess or have access to a computer which is attached to a modem or telephonic device. [¶] The Minor shall not be on the Internet without school or parental supervision."

The minor did not object to these conditions below, but argues that the issue of whether these conditions are unconstitutionally overbroad presents a pure question of law that can be resolved on appeal. While ordinarily the failure to object in the trial court to a probation condition precludes review of the issue on appeal (*People v. Welch* (1993) 5 Cal.4th 228, 237), where as here, the challenge to the condition is made on constitutional grounds, we can consider the claim on appeal despite the failure to preserve the claim in the juvenile court (*In re R.P.* (2009) 176 Cal.App.4th 562, 566; *In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*) [challenge to probation condition on vagueness grounds preserved on appeal despite failure to object in trial court]).

The minor contends that the restrictions on his use of paging devices, social networking sites, and computers which are attached to a modem or telephonic device are unconstitutionally overbroad and violate his rights to freedom of speech and expression.[2]

"A probation condition is constitutionally overbroad when it substantially limits a person's rights and those limitations are not closely tailored to the purpose of the condition. [Citation.] It is not enough to show the government's ends are compelling; the means must be carefully tailored to achieve those ends. . . . The state's power to inhibit free speech is limited. Since laws regulating expression pose a particular danger of abuse, they are carefully scrutinized." (*People v. Harrisson* (2005) 134 Cal.App.4th 637, 641-642.)

Relying on *In re Englebrecht* (1998) 67 Cal.App.4th 486 (*Englebrecht*), the minor argues that the condition restricting his use of paging devices and other portable communication equipment unreasonably restricts his constitutional rights and functions as a prior restraint on his right to expression. *Englebrecht* did not address a probation condition, but rather a preliminary injunction order prohibiting the use or possession of pagers or beepers within a "Target Area" known for gang activity and illegal drug sales. (*Id.* at pp. 488-489.) The court concluded that the ban on pagers and beepers was unconstitutionally overbroad, reasoning that mobile communication devices are commonly used for legitimate purposes. (*Id.* at pp. 496-499.) But *Englebrecht*'s constitutional analysis does not invalidate the probation condition imposed here because it is well settled that a probation condition may limit a defendant's exercise of constitutional rights if the limitation is reasonably necessary to effectuate the goals of probation. (*People v. Bauer* (1989) 211 Cal.App.3d 937, 941.)

Here, the court was concerned with preventing future criminality and had, thus, imposed gang conditions. In imposing the restrictions on the use of pagers and other portable communication devices including scanners, the court no doubt was aware of the use of those devices in gang activity and in eluding police. (See *Englebrecht, supra,* 67

[2] The minor does not challenge the probation condition precluding the use of the Internet without school or parental supervision.

Cal.App.4th at pp. 498-499.) The probation condition was thus reasonable as it furthered the court's goal of preventing future criminality. Moreover, the minor was not without recourse to use these devices should he need them for a legitimate purpose, as the condition allowed for use with the permission of his probation officer.

Similarly, the probation condition prohibiting his access to social networking sites and using or possessing computers attached to a modem or telephonic device were reasonable. Social networking sites are now commonly used not only by gangs, but also by individuals who do graffiti to display and promote their "work." Because probation is a privilege and not a right (*People v. Bravo* (1987) 43 Cal.3d 600, 608), a probationer, and in particular a minor, is not entitled to the same degree of constitutional protections as other citizens (*People v. Peck* (1996) 52 Cal.App.4th 352, 362). Thus, " 'a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.' " (*Sheena K., supra*, 40 Cal.4th at p. 889.) "[T]he basis for this distinction has been that a juvenile probationary order is a part of a final order, which the minor may not reject, aimed at ensuring the minor's reformation and rehabilitation, while an adult probationary order, which the defendant may reject, is an act of leniency in lieu of the prescribed statutory punishment." (*Lopez, supra*, 66 Cal.App.4th at p. 625.) Here, the challenged probation conditions are designed to prevent the minor's future criminality. They reasonably restrict his use of communication devices and are related to his offenses. We perceive no abuse of discretion in their imposition.

III. DISPOSITION

The order is affirmed.

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RIVERA, J.

We concur:

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REARDON, Acting P.J.

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SEPULVEDA, J.